

United States District Court  
Middle District of Florida  
Jacksonville Division

**MATTHEW CAPELLI AND CAPELLI  
CONSTRUCTION, LLC,**

***Plaintiffs,***

**v.**

**No. 3:21-cv-404-MMH-PDB**

**TOTAL CONSTRUCTION OF FLORIDA, INC., ETC.,**

***Defendants.***

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**Order**

As directed by the Court, Docs. 35–36, the Clerk of Court entered defaults against the defendants for failing to defend the case and comply with orders directing the corporate defendants to obtain counsel and the individual defendants to obtain counsel or notify the Court they would be proceeding without counsel, Docs. 37–40.

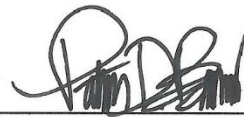
The defendants now move to set aside the defaults and for leave to belatedly respond to the amended complaint. Doc. 44. They explain the plaintiffs oppose the relief requested, Doc. 44 at 5, but the plaintiffs failed to respond. “If a party fails to timely respond, the motion is subject to treatment as unopposed.” Local Rule 3.01(c). The Court treats the motion as unopposed.

The defendants argue they received the order directing them to show cause why defaults should not be entered, Doc. 34, and the report and recommendation recommending the entry of defaults, Doc. 35, in late November (more than a month after entry of the order and the report and recommendation) and diligently obtained counsel after that. Doc. 44 at 3. In

affidavits, David Van Hoeven and Pia Silva\* state that in the last “few months,” including November, they traveled many times to Kentucky to visit Mr. Van Hoeven’s father, who is ill. Doc. 44-1 ¶ 10; Doc. 44-2 ¶ 8. Mr. Van Hoeven states he diligently tried to obtain counsel “between these trips[.]” Doc. 44-1 ¶ 11; *see also* Doc. 44-2 ¶ 9.

Under Federal Rule of Civil Procedure 55(c), the court may set aside an entry of default for good cause. Based on the circumstances described in the motion and the absence of opposition, the Court finds good cause and **grants** the motion, Doc. 44. The defaults entered against the defendants are **vacated**. The defendants must respond to the amended complaint, Doc. 21, by **January 31, 2022**.

**Ordered** in Jacksonville, Florida, on January 18, 2022.



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PATRICIA D. BARKSDALE  
*United States Magistrate Judge*

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\*Mr. Van Hoeven is the president of Total Construction of Florida, Inc., and Mrs. Silva is the vice-president. Doc. 44-1 ¶ 1–2; Doc. 44-2 ¶ 1. They are co-managers of Total Roofing of Florida, LLC. Doc. 44-1 ¶ 1–2; Doc. 44-2 ¶ 1.